UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

Q.B CONSTRUCTION, INC. Employer and UNION DE CARPINTEROS DE PUERTO RICO, INC. Petitioner	Case: 24-RC-8502

SUPPLEMENTAL DECISION ON CHALLENGED BALLOTS

Pursuant to a Decision and Direction of Election issued on December 1, 2005, an election by secret ballot was conducted on December 30, 2005, under the direction and supervision of the Regional Director among all full time and regular part time carpenters and carpenter helpers, masons and mason helpers, light truck operators, welders, and non-skilled laborers employed by the Employer at its place of business in San Juan, Puerto Rico (Coliseum Tower Project), but excluding all other employees, guards, and supervisors as defined by the Act, to determine whether or not said employees desired to be represented for the purpose of collective bargaining by Union de Carpinteros de Puerto Rico, Inc., hereinafter the Petitioner.

The tally of ballots, made available to the parties, revealed the following:

Approximate number of eligible voters	76
Void ballots	0
Votes cast for Petitioner	13
Votes cast against participating labor organization	17
Valid votes counted	30
Challenged ballots	7
Valid votes counted plus challenged ballots	37

Challenges were sufficient in number to affect the results of the election.

Pursuant to the Decision and Direction of Election, and in conformity with Section 102.69 of the Board's Rules and Regulations, the undersigned Regional Director sets forth her findings, conclusions and recommendations with respect thereto.

THE CHALLENGED BALLOTS[1]

The following employees were challenged by the Board Agent at the scheduled election because their names did not appear on the list of eligible voters:

José L.González	Juan O. Ocasio
Víctor Torres	Samuel Morales
Domingo del Valle	Carlos A. Pérez

The ballot of Ramón Rubén was challenged by the Employer because he was ostensibly discharged after the eligibility date and prior to the election. However, during the investigation of the aforementioned challenged ballots, the Employer withdrew the challenge to his ballot acknowledging that this employee was indeed eligible to vote. Accordingly, the challenge to the ballot of Ramón Rubén is overruled and to be opened, commingled, and counted on a date, time and place to be designated by the undersigned together with the other voters found to be eligible herein.[2]

A review of the Employer's payroll records reveals that Samuel Morales, Domingo del Valle and Juan O. Ocasio[3] were hired by the Employer as carpenters on August 23, 2004, June 13, 2005 and September 14, 2004, respectively. The record also reflects that these employees were working on the day of the election. With regard to Víctor D. Torres the Employer's payroll records show that he was hired as a laborer on November 28, 2005 and was working on the day of the election. As these individuals were employed in eligible classifications, appeared on the Employer's payroll on the relevant eligibility period and employed on the date of the election, I shall overrule the

[1] By letter dated January 3, 2006, the Regional Director requested the parties to submit their position and evidence in support of the challenged ballots by no later than January 10, 2006. The Employer submitted a position statement but the petitioner did not respond to the Regional Director's request

[2] Section 11361.2 of the Representation Case Handling Manual states that the Regional Director may approve the withdrawal of a challenge notwithstanding the objection of any other party

[3] Mr. Ocasio was inadvertently excluded by the Employer from the eligibility list because he had suffered a work related accident and was reported to the State Insurance Fund for treatment of his injuries.

challenge to their ballots and order that their votes be opened, commingled, and counted with the other ballots found to be eligible herein.

With respect to the challenge to the ballot of José L. González, the Employer contends that this individual has never been an employee of the Employer but rather, an employee of a subcontractor working at the Employer's construction project. As noted the Petitioner did not submit a position on the eligibility of this individual. Accordingly, as there is no dispute that José L. González is not an employee of the Employer[4], I shall sustain the challenge to his ballot.

Carlos A. Pérez was hired by the Employer as a carpenter on or about October 12, 2005 and worked until about October 25, 2005 when he purportedly ceased working for "unknown reasons".[5] The record also reflects that Mr. Pérez returned to work on or about December 13 and that he was working for the Employer during for the payroll period ending December 27, 2005. Citing the Board's decision in *Steiny & Co*., 308 NLRB 1323 (1992), the Employer contends that Mr. Pérez is eligible to vote. However, the Employer did not submit any reasons for Mr. Pérez's absence from work for the period October 25 to December 13, 2005. More particularly, the Employer did not state whether Mr. Pérez was laid off, quit or was discharged for cause.

Under the Board's *Steiny* formula, applicable to employers engaged in the construction industry such as the instant employer, an employee is eligible to vote if he (1) was employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date of the election, or (2) had some employment with the Employer during the 12-month period and had been employed 45 working days or more within the 24-month period preceding the eligibility date. *Steiny*, supra, 308 NLRB at 1326. The formula, however, excludes those employees who were fired for cause or quit voluntarily prior to the election, no matter the duration of their prior employment. See *Metfab,Inc*., 344 NLRB No. 6 (2005). ("Employees who had been terminated for cause or quit voluntarily prior to completion of the last job for which they were employed would not be eligible under this formula")

[4] Additionally, the Employer's payroll for the period in question does not reflect that the aforementioned individual is employed by the Employer.

[5] As the payroll eligibility period for this election ended on November 30, 2005, Mr. Pérez's name was consequently not on the Employer's payroll.

In the instant case, the record does not reflect that Mr. Pérez worked for 30 working days or more within the 12 month period preceding the eligibility date for the election (November 30) or 45 working days or more within the 24-moth period preceding the eligibility date. Additionally, the Employer did not provide any explanation as to whether Pérez had a reasonable expectancy of returning to work after leaving his job for "unknown reasons" on October 25, 2005. Accordingly, I find that Carlos A. Pérez was not eligible to vote and shall sustain the challenge to his ballot.

CONCLUSION

Having determined that José L. González and Carlos A. Pérez are ineligible to vote, I sustain the challenge to their ballots. Having overruled the challenge to the ballots of Samuel Morales, Víctor Torres, Ramón Rubén, Juan O. Ocasio, and Domingo del Valle, I order that their votes be opened, commingled, and counted on a date, time and place to be scheduled by the undersigned and that the appropriate certification issue[6].

Dated at San Juan, Puerto Rico this 31st day of January, 2006.

Marta M. Figueroa
Regional Director
National Labor Relations Board
Region 24

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[6] Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. 20570. Exceptions must be received by the Board in Washington by **February 14, 2006**.

Under the provisions of Section 102.69(g) of the Board's rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its challenges and which are not included in the Report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.